

2003 DRAFTING REQUEST**Bill**Received: **09/17/2003**Received By: **mshovers**Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**By/Representing: **Rep. Underheim**This file may be shown to any legislator: **NO**Drafter: **rkite**

May Contact:

Addl. Drafters: **mshovers**Subject: **Nat. Res. - wet/shore/flood
Munis - zoning
Counties - zoning**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Require DNR to approve mitigation of wetlands in areas under a Smart Growth comprehensive plan

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/1	rkite 12/10/2003	kgilfoy 12/16/2003	rschluet 12/17/2003	_____	sbasford 12/17/2003 mbarman 12/23/2003	lemery 01/22/2004	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

At
intro.

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Via e-mail
only - per RNK

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12/17/2003 08:25:23 AM

Page 2

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/?	rkite	1-12/16 kmg					
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clarify the ability to mitigate
wetlands in smart growth

low level WLS

discovered after 100Ks spent

and the state approved to develop

ask DNR to approve wetlands
mitigation

in areas slated for develop if
develop is consistent w/ a smart
growth comp. plan

Greg Underheim 9/17/03

16.965 - "smart growth"

see: 781.165 - add exemption of
"low level" wetlands in "smart growth"
areas



Soon
State of Wisconsin
2003 - 2004 LEGISLATURE

RMR
1
LRB-3293/3
RNK:.....
king

D-Note

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

- Gen. Cont.
- 1 AN ACT ~~relating to~~; relating to: activities exempt from water quality standards that are
- 2 applicable to wetlands and that are exempt from certain other approvals, fees,
- 3 notices, hearings, procedures, and penalties.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) has promulgated rules that establish water quality standards for wetlands. Current law provides that activities that meet certain conditions are exempt from these rules if the activities meet certain criteria. The activities are also exempt from various other requirements, licenses, and procedures existing under current law, including those related to navigable waters, dams and bridges, pollution discharge elimination, and solid waste facilities. The activities that are exempt under current law are located at two separate sites in the state. The criteria for the activity at one of the sites include requirements that the wetland area ^{st et} that will be affected be less than 15 acres, that the site of the activity be in a city in Trempealeau County, and that the city adopt a resolution stating that the exemption is necessary to protect jobs or promote the creation of jobs in the city. The criteria for the activity at the other site include requirements that the wetland area ^{st et} that will be affected be less than 4.2 acres, that the site of the activity be in Dunn County, and that the site of the activity be zoned for technology park use.

Under the current law popularly known as the "Smart Growth" statute, if a local governmental unit (city, village, town, county, or regional planning commission) creates a comprehensive plan (a development plan or a master plan) or amends an existing comprehensive plan, the plan must contain certain planning elements.

Four and two-tenths

Beginning on January 1, 2010, under Smart Growth, any program or action of a local governmental unit that affects land use must be consistent with that local governmental unit's comprehensive plan. Also beginning on January 1, 2010, under Smart Growth, if a local governmental unit engages in any program or action that affects land use, the comprehensive plan must contain at least all of the required planning elements.

This bill creates a new wetlands compliance exemption. Under the bill, an activity is entitled to the exemption if it is located in a city, village, town, or county that has adopted a comprehensive plan under Smart Growth, if the wetland area that will be affected by the activity has negligible functional values, and if the activity incorporates a plan to create at least 1.5[✓] acres of wetland for each acre of wetland affected by the activity.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 59.692 (6m) of the statutes is amended to read:

2 59.692 (6m) For an amendment to an ordinance enacted under this section that
3 affects an activity that meets all of the requirements under s. 281.165 (2) ~~or~~[✓] (3) (a),
4 or (4)[✓], the department may not proceed under sub. (6) or (7) (b) or (c), or otherwise
5 review the amendment, to determine whether the ordinance, as amended, fails to
6 meet the shoreland zoning standards.

History: 1979 c. 233; 1981 c. 330; 1983 a. 189 s. 329 (23); 1991 a. 39; 1993 a. 329; 1995 a. 201 s. 476; Stats. 1995 s. 59.692; 1995 a. 227; 1997 a. 27, 35, 252; 1999 a. 9; 1999 a. 150 s. 672.

7 **SECTION 2.** 61.351 (6m) of the statutes is created to read:

8 61.351 (6m) CERTAIN AMENDMENTS TO ORDINANCES. For an amendment to an
9 ordinance enacted under this section that affects an activity that meets all of the
10 requirements under s. 281.165 (4)[✓], the department of natural resources may not
11 proceed under sub. (6), or otherwise review the amendment, to determine whether
12 the ordinance, as amended, fails to meet reasonable minimum standards.

13 **SECTION 3.** 62.231 (6m) of the statutes is amended to read:

1 62.231 (6m) CERTAIN AMENDMENTS TO ORDINANCES. For an amendment to an
2 ordinance enacted under this section that affects an activity that meets all of the
3 requirements under s. 281.165 (2) ~~or~~ [✓] (3) (a), or (4), the department of natural
4 resources may not proceed under sub. (6), or otherwise review the amendment, to
5 determine whether the ordinance, as amended, fails to meet reasonable minimum
6 standards.

History: 1981 c. 330, 391; 1995 a. 201; 1995 a. 227; 1999 a. 9.

7 **SECTION 4.** 87.30 (1) (d) of the statutes is amended to read:

8 87.30 (1) (d) For an amendment to a floodplain zoning ordinance that affects
9 an activity that meets all of the requirements under s. 281.165 (2) ~~or~~ [✓] (3) (a), or (4),
10 the department may not proceed under this subsection, or otherwise review the
11 amendment, to determine whether the ordinance, as amended, is insufficient.

History: 1971 c. 164; 1975 c. 232, 301, 422; 1977 c. 29 s. 1654 (8) (c); 1977 c. 437, 447; 1979 c. 34 s. 2102 (58) (b); 1981 c. 339; 1985 a. 182; 1995 a. 201, 311, 455; 1999 a. 9.

12 **SECTION 5.** 281.165 (1) of the statutes is amended to read:

13 281.165 (1) COMPLIANCE; EXEMPTION. An activity shall be considered to comply
14 with the water quality standards that are applicable to wetlands and that are
15 promulgated as rules under s. 281.15 and is exempt from any prohibition, restriction,
16 requirement, permit, license, approval, authorization, fee, notice, hearing,
17 procedure or penalty specified under s. 29.601 (3) or chs. 30, 31, 281, 283, 289 to 292
18 or 299 or specified under any rule promulgated, order issued or ordinance adopted
19 under any of those sections or chapters, if the activity meets all of the requirements
20 under ^{plain space} ~~either~~ sub. (2) ~~or~~ [✓] (3), or (4).

History: 1999 a. 9.

21 **SECTION 6.** 281.165 (4) of the statutes is created to read:

22 281.165 (4) ACTIVITIES COVERED BY COMPREHENSIVE PLANNING. Subsection (1)
23 applies to an activity that meets all of the following requirements:

1 (a) The wetland area that will be affected by the activity has negligible
2 functional values.

3 (b) The site of the activity is located in a city, village, town, or county that has
4 adopted a comprehensive plan, as defined in s. ~~66.001~~ (1) (a). ^{66.1001}

5 (c) The activity incorporates a plan by the person engaging in the activity to
6 create at least 1.5 acres of wetland for each acre of wetland affected by the activity.

7 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3293/3^{1 dn}

RNK: 1/2...
img

Please review this draft closely to ensure that it is consistent with your intent.

You had requested that the exemption created in this draft apply to "low level" wetlands. I was unable to find any reference to such wetlands and, instead, made the exemption apply to wetlands with "negligible functional values". This is a term that currently appears in the statutes. Also, I included a requirement that the activity must incorporate a plan to create at least 1.5 acres of wetland for each acre of wetland affected by the activity. Finally, I have assumed that you intended the exemption to apply for activities conducted in cities, counties, towns, and villages. If these provisions are not consistent with your intent, please let me know and I will redraft accordingly.

Please feel free to contact me if you have any questions concerning this draft.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3293/1dn
RNK:kmg:rs

December 17, 2003

Please review this draft closely to ensure that it is consistent with your intent.

You had requested that the exemption created in this draft apply to "low level" wetlands. I was unable to find any reference to such wetlands and, instead, made the exemption apply to wetlands with "negligible functional values." This is a term that currently appears in the statutes. Also, I included a requirement that the activity incorporate a plan to create at least 1.5 acres of wetland for each acre of wetland affected by the activity. Finally, I have assumed that you intended the exemption to apply for activities conducted in cities, counties, towns, and villages. If these provisions are not consistent with your intent, please let me know and I will redraft accordingly.

Please feel free to contact me if you have any questions concerning this draft.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

Emery, Lynn

From: Hough, Michelle
Sent: Thursday, January 22, 2004 12:58 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3293/1 Topic: Require DNR to approve mitigation of wetlands in areas under a Smart Growth comprehensive plan

It has been requested by <Hough, Michelle> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3293/1 Topic: Require DNR to approve mitigation of wetlands in areas under a Smart Growth comprehensive plan